

INTRODUCTION

Good afternoon, Chairman Shockley and the distinguished members of this committee. My name is Michael Robinson and I represent the National Notary Association and the 4.8 million Notaries Public served by the NNA across the country, including nearly 20,000 Montana members. Since 1957, the NNA has been a leader in advancing the importance of the Notary office, working with lawmakers and government agencies to protect the role played by the Notary Public, and educating and supporting the needs of Notaries throughout the United States. A former colleague of mine, Mr. Tim Reiniger, appeared before this committee exactly two years ago and spoke with some of you and your predecessors, about the merits of then SB 299. In the weeks and months following SB299 becoming law, the NNA worked with Secretary McCullough's office to reach out to Montana's Notary Public community with support and the necessary education to prepare them to comply with the new law – and to perform their duties with greater diligence and confidence.

Today I am here to tell you why the NNA believes it is a bad idea to reverse course and repeal the journal provision that was enacted just two years ago and why we urge you to defeat this bill in this committee.

To put Montana's journal requirement in context, you should know that a total of 28 states and jurisdictions in the U.S., including Montana, either by statute or executive order, maintain regulations that mandate the journal as a key tool in recording acts performed by Notaries Public. So why is a journal requirement the law of the land across a majority of the country?

GOOD PUBLIC POLICY

First of all, it is good public policy to require Notaries to keep a journal because it is the only record a Notary can retain to prove that a notarial act was performed. Notaries do not generally make photocopies of the documents that they notarize and then file them away for safekeeping – now *that* would be burdensome and onerous, as well as raise serious issues of privacy. The journal is the Notary's record that the notarial act was performed at a given date and location, and since lawsuits typically occur years after a given notarial act, without a journal to recall the act, needless litigation maybe spawned and unnecessarily prolonged. Journals help lighten the burden on our clogged courts.



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Montana Code Annotated Section 1-5-406 says, "For the official misconduct or neglect of a notary public, he and the sureties on his official bond are liable to the parties injured thereby for all damages sustained." Given that Notaries have full liability for their actions, the record documenting a notarial act is critical in protecting the Notary."

PROTECTS CONSUMERS

Second, the journal is good public policy because a journal record can protect consumers. Allow me to share an example of the value of Notary journals from my home state of California, a state that also requires Notaries to maintain a journal. A Spanish-speaking woman reported that her identity had been stolen and a house had been purchased in her name without her knowledge. Law enforcement officials investigating the case obtained the Notary's journal and were surprised to see that the victim's name did, in fact, appear. When asked by the officer if she had ever signed anything with the suspect, the victim said she had gone to the suspect and signed immigration papers that had been translated for her by the suspect. Of course, the documents were not immigration papers, but in fact real estate documents. Without the journal, it would have been less likely that the detectives on this case would have been able to unravel the mystery of how this woman's identity had been stolen.

STANDING OPERATING PROCEDURE

Interestingly enough, we've heard from thousands of Notaries that the journal serves as a checklist, as modus operandi or standing operating procedure for properly performing a notarial act. The process of completing a journal entry reminds the Notary to carry out all facets of that notarial act according to statute.

MONTANA'S IS A MEASURED STATUTE

And I believe it is important for you to know that the drafters of SB299 did their homework. Current Montana law is a measured statute, in comparison with journal laws in other jurisdictions. Here in Montana, Notaries have to record less in their journals than do Notaries in many other states. The Secretary of State is very clear on page 3 of its Notary Public Handbook that drivers license numbers, birthdates, passport numbers, expiration dates, etc. are not to be recorded in the journal. This not only makes the journal entry less onerous, it also ensures that the privacy of the signer is fully protected.



Testimony of Michael Robinson, Director of External Communications
to the Montana Senate State Administration Committee
March 16, 2011

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ATTORNEY-CLIENT PRIVILEGE

Let me speak to one misunderstanding of the journal raised by the bill's supporters. It is often thought that the journal violates the attorney-client privilege. I think it important to share with you – that while the argument is often made, it holds no merit. Allow me to read an excerpt from The John Marshall Law Review, Volume 42, Number 2, dated Winter 2009. In the article titled "The Case That There is a Common Law Duty of Notaries Public to Create and Preserve Detailed Journal Records of Their Official Acts," written by John Marshall Law School Professor Emertius Michael Closen and the National Notary Association's Vice President of Legislative Affairs Charles Faerber, on the bottom of page 423,

"...the claim that the keeping of notary journal entries will lead to the violations of the attorney-client privilege ... is illusory. In order for there to be claim on an attorney-client privilege, there must have been a confidential communication between the client and the attorney. A notary journal entry for notarization should contain nothing of relevance to the attorney-client relationship or of a confidential nature such as to invoke its evidentiary privilege. The most revealing information in a notary journal entry relevant to the attorney-client relationship would be the identification of the document signer (who would happen to be the client) and the instrument type being executed (such as an affidavit, contract, litigation document, mortgage, power of attorney, title, trust, will, etc.) along with the date ... of the signing ... Absolutely none of the substantive content of the notarized document would be recorded in the notary journal entry."

"Generally, the fact of the employment of an attorney by a client is neither confidential nor protected by the attorney-client privilege."

NCCUSL

The state of Montana has enacted the Uniform Law on Notarial Acts adopted by the National Conference of Commissioners on Uniform State Laws. Here's what the 2010 Revised Uniform Law drafting committee said about the use of a journal by the Notary Public in the official comments:

"Creating and maintaining a journal of the notarial acts that a notary public performs provides a number of assurances that will protect the integrity of the notarial system. Among other benefits, it helps to assure, or at least determine whether, a notarial act that is performed in the name of a particular notary public was indeed



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performed by that notary. As an ordinary business record the journal may provide evidence that the act was performed by the notary or, by the absence of an entry in the journal, it may provide evidence that the act was not performed by the notary. In that regard, it provides protection to both the notary and to the public whom the notary serves.”

CONCLUSION – THE JOURNAL IS KEY

And so, in conclusion, Senator Shockley and distinguished members of this committee – thank you for your serious consideration of the implications of HB306. You’re time and commitment to the people of Montana is evident in your whirlwind schedule here in Helena. You’re to be commended for the breadth of serious thought and contemplation given to so many issues within such a short period of time – quite honestly, I think you’re tackling more in a few short months, than many state legislatures take on in an entire year. But I implore you to weigh the seriousness of this particular bill – and the negative impact it will have on the office of the Notary Public in this state if you report this bill favorably to the full Senate. A journal is key in protecting the Notary from lawsuits – a journal is key to law enforcement in prosecuting criminal acts involving notarized documents – a journal is key to state Notary regulating officials who investigate allegations of misconduct by Notaries – and most importantly, a journal is key to protecting the personal and commercial transactions of the people of Montana.

I’m including a formal letter of opposition to HB306 from the National Notary Association with a copy of my testimony to you this afternoon. I would be happy to entertain any questions from you. Thank you.





EXHIBIT NO. 7
DATE 3.16.11
BILL NO. HB 306

NATIONAL NOTARY ASSOCIATION

March 16, 2011

Senator Jim Shockley, Chair, and Members
of the Senate Committee on State Administration
Montana Senate
P.O. Box 200500
Helena, MT 59620-0500

RE: WHY THE NATIONAL NOTARY ASSOCIATION OPPOSES HOUSE BILL 306

Dear Senator Shockley and Committee Members:

Reliable protection for consumers and Montana Notaries Public will be jeopardized if House Bill 306 is enacted, repealing the Notary journal requirement that is universally acknowledged as an effective tool to prevent or quickly resolve many baseless lawsuits that clog our courts.

Keeping a minimal record of each official act is a business practice that every responsible public officer must be expected to perform. The Notary's journal provides invaluable physical evidence that:

- Protects the signer and other involved parties in the event the document is lost, challenged or fraudulently altered.
- Deters forgers and imposters who are naturally unwilling to leave a signature in a journal that could incriminate them.
- Discourages groundless lawsuits by showing that a signer appeared before the Notary.
- Assists law enforcement authorities in prosecuting frauds and the Secretary of State in investigating misconduct by Notaries.
- Protects the Notary by showing reasonable care was taken in identifying the signer.

Law enforcement agencies enthusiastically endorse Notary journals because they contain valuable evidence about the document and signer that makes forgeries easier to prosecute. When a document is contested in court, the Notary's testimony becomes critically important in determining whether a signature was forged, coerced or incompetently made.

Without a journal entry to aid the Notary in recalling an event that occurred many years in the past, most Notaries would find it difficult to remember the circumstances of the notarization. The absence of a Notary journal can result in prolonged litigation and unfounded lawsuits.

I urge you to defeat HB 306 and thereby leave in place a time-tested tool for fighting fraud.

Sincerely,

Michael Robinson
Executive Director

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DATE

BILL NO.

7
3.16.11
48306

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Executive Director



Since 1957

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